UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>4 November 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17,18,23-28,30-32,36,37,42-44,49-51,53 and 58-71* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17,18,23-28,30-32,36,37,42-44,49-51,53 and 58-71* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>4 November 2004</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

Notice to Applicant

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4

November 2004 has been entered.

2.   This communication is in response to the RCE filed 4 November 2004. The IDS

filed 4 November 2004 have been entered and considered. Claims 17, 18, 23-28, 30-

32, 36, 37, 42-44, 49-51, 53 and 58-71 are pending. The claims have not been

amended.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claims 26-28, 30-31, 36, 44, 49-50, 58-59, 62-63, 66-67, and 70-71 are rejected

under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

point out and distinctly claim the subject matter which applicant regards as the

invention. Claims 26, 44, and 58 recite a system "operable to." It is not clear from this

claim language which structures in the system are <u>actively</u> performing the steps recited

in the claims. For example, it is unclear whether the "filtering system" in claim 26 actually performs an identifying step. It is respectfully submitted that the Applicant consider positively reciting the functions performed by the system.

Claims 27-28, 30-31, 36, 49-50, 59, 62-63, 66-67, and 70-71 incorporate the deficiencies of independent claims 26, 44, and 58, through dependency, and are also rejected.

Requirement for Information Under 37 C.F.R. § 1.105

5.   Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

Applicant has discussed with the Examiner during several telephone conversations between November 2004 and January 2005 regarding litigation the Applicant is currently involved with related to this application. According to MPEP § 2001.06(c), where the subject matter for which a patent is being sought is or has been involved in litigation, the existence of such litigation and any other material information arising therefrom must be brought to the attention of the U.S. Patent and Trademark Office. Examples of such material information include evidence of possible prior public use or sales, questions of inventorship, prior art, allegations of "fraud," "inequitable conduct," and "violation of duty of disclosure." Another example of such material information is any assertion that is made during litigation which is contradictory to assertions made to the examiner. *Environ Prods., Inc. v. Total Containment, Inc.,* 43 USPQ2d 1288, 1291 (E.D. Pa. 1997). Such information might arise during litigation in,

for example, pleadings, admissions, discovery including interrogatories, depositions,

and other documents and testimony.

The Examiner requests information related to the litigation related to this

application including information regarding the patent involved in litigation with this

application, any prior art Applicant is using against the patent, and/or any evidence of

public use or sale by the inventors or assignee of the patent.

6.   In responding to those requirements that require copies of documents, where the

document is a bound text or a single article over 50 pages, the requirement may be met

by providing copies of those pages that provide the particular subject matter indicated in

the requirement, or where such subject matter is not indicated, the subject matter found

in applicant's disclosure.

7.   The fee and certification requirements of 37 CFR 1.97 are waived for those

documents submitted in reply to this requirement. This waiver extends only to those

documents within the scope of this requirement under 37 CFR 1.105 that are included in

the applicant's first complete communication responding to this requirement. Any

supplemental replies subsequent to the first communication responding to this

requirement and any information disclosures beyond the scope of this requirement

under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR

1.97.

8.   The applicant is reminded that the reply to this requirement must be made with

candor and good faith under 37 CFR 1.56. Where the applicant does not have or

cannot readily obtain an item of required information, a statement that the item is

unknown or cannot be readily obtained will be accepted as a complete reply to the

requirement for that item.

9.   This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136

and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME

PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

11.   Claims 17-18, 23-28, 32, 37, 42, 44, 49, 51, and 58-59 are rejected under 35

U.S.C. 103(a) as being unpatentable over Bukow (6,567,784) in view of Mitsuoka et al.

(6,446,914).

(A) As per claim 17, Bukow discloses a method of matching projects and workers using

a database in communication with a matching system and allowing a worker to view

matched projects (Abstract, Figures 3-5, col. 5 lines 45-54, col. 7 line 55 to col. 8 line 37) comprising:

(a) providing a database of workers, the database having information about quantitative characteristics of the worker, wherein the characteristics include experience, start/end time, cost, hours per week a worker is able to work, and reputation (Figure 1, col. 2 lines 13-50, col. 2 line 53 to col. 4 line 33, col. 5 lines 45-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38);

(b) creating a project that needs to be performed by a worker, the project having a corresponding plurality of characteristics such as the activity, experience required, start/end time, hours per week, a location, and an industry, wherein the activities include art creation, business modeling, diagramming, flowcharting, software programming, language translating, writing, proofreading, researching, and/or some other type of activity such as non-technical jobs like temporary position or full-time employment (Figure 1, col. 2 lines 11-65, col. 5 lines 10-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38);

(c) matching the workers to projects using the corresponding characteristics to determine groups of matching workers for corresponding projects, wherein the workers and projects are stored in a database, wherein the characteristics are required elements that a worker must absolutely fit in order to be matched with the project, and wherein for example, if there are ten thousand workers and the activity is web artwork, perhaps only one hundred workers in the system have indicated they are interested in performing

web artwork, therefore 9,900 workers are eliminated at this stage (col. 2 lines 13-50, col. 2 line 65 to col. 5 line 55, and col. 9 line 25 to col. 12 line 3); and

(d) providing a login web page allowing a worker to identify herself/himself to the system using an e-mail address and password, wherein the workers and projects are stored in a database, and wherein the web page displays matches of available projects for which the worker has corresponding characteristics (Figures 2-8, col. 2 line 65 to col. 5 line 55, col. 7 line 55 to col. 9 line 3, and col. 9 line 25 to col. 12 line 3).

Bukow does not expressly disclose "simultaneously notifying" those employees in the database having the qualification.

Mitsuoka discloses forwarding a job offer notification to all contractors based on whether the contractors' schedule is free, sending out a job offer notification only to contractors who have at least a certain aptitude value necessary for the job, and transmitting a job offer notification to contractors based on the level of difficulty and importance of the job to the appropriate contractors (col. 10 line 1 to col. 12 line 53).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the components of Mitsuoka within the method of Bukow with the motivation of efficiently allowing the matching of projects to workers over the Internet (Bukow; col. 1 lines 5-50) and reducing the level of complication required for negotiating jobs between job providers and multiple contractors (Bukow; col. 1 lines 5-50; Mitsuoka; col. 2 lines 18-46).

(B) As per claim 18, Bukow discloses allowing a worker to view on his/her web page, multiple projects (see Figures 4-5 for two different projects) that match the workers characteristics (Figures 2-8, col. 7 line 55 to col. 8 lines 48).

(C) As per claim 23, Mitsuoka discloses that the communication portion and notification portion for interacting with contractors using HTTP and e-mail (col. 7 line 65 to col. 8 line 10). Further, Mitsuoka discloses that there are many ways to realize such communication portions and such notification portions (col. 7 line 65 to col. 8 line 10).

It is noted that as per the recitation of "textual message", Mitsuoka discloses job offer notifications via e-mail which is considered to be a form of "textual message".

The motivation for combining Mitsuoka within Bukow is given above in claim 17, and incorporated herein.

(D) As per claim 24, Bukow and Mitsuoka are entirely silent as to charging a fee upon notifying the employee. It is respectfully submitted that charging a fee for using a system is a means typically employed by Internet web sites for generating revenue, and the skilled artisan would have found charging a fee an obvious modification to the method taught collectively by Bukow and Mitsuoka with the motivation of providing a means for generating revenue for the organization maintaining the system.

(E) As per claim 25, Mitsuoka discloses receiving notification that a job has been applied for by a contractor, wherein a selection result notification is sent to the

contractor who applied for the job, wherein the notification is sent out directly after the

application by the contractor has been received, wherein other contractors that applied

for the same job are notified that they have not been selected (col. 9 lines 5-55). The

motivation for combining Mitsuoka within Bukow is given above in claim 17, and

incorporated herein.

(F) System claim 26 differs from method claim 17 by reciting hardware elements,

namely, namely, a database of employees, a filtering system, and a notification system.

As per these elements, Bukow teaches:

(a) a database of workers, the database having information about quantitative

characteristics of the worker, wherein the characteristics include experience, start/end

time, cost, hours per week a worker is able to work, and reputation (Figure 1, col. 2 lines

13-50, col. 2 line 53 to col. 4 line 33, col. 5 lines 45-55, col. 9 line 25 to col. 10 line 32,

and col. 11 line 32 to col. 12 line 38);

(b) a matching program for utilizing a created project that needs to be performed

by a worker, the project having a corresponding plurality of characteristics such as the

activity, experience required, start/end time, hours per week, a location, and an industry,

wherein the activities include art creation, business modeling, diagramming,

flowcharting, software programming, language translating, writing, proofreading,

researching, and/or some other type of activity such as non-technical jobs like

temporary position or full-time employment (Figure 1, col. 2 lines 11-65, col. 5 lines 10-

55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38) and matching

the workers to projects using the corresponding characteristics to determine groups of

matching workers for corresponding projects, wherein the workers and projects are

stored in a database, wherein the characteristics are required elements that a worker

must absolutely fit in order to be matched with the project, and wherein for example, if

there are ten thousand workers and the activity is web artwork, perhaps only one

hundred workers in the system have indicated they are interested in performing web

artwork, therefore 9,900 workers are eliminated at this stage (col. 2 lines 13-50, col. 2

line 65 to col. 5 line 55, and col. 9 line 25 to col. 12 line 3); and

(c) a web interface including a login web page allowing a worker to identify

herself/himself to the system using an e-mail address and password, wherein the

workers and projects are stored in a database, and wherein the web page displays

matches of available projects for which the worker has corresponding characteristics

(Figures 2-8, col. 2 line 65 to col. 5 line 55, col. 7 line 55 to col. 9 line 9, and col. 9 line

25 to col. 12 line 3).

Bukow does not expressly disclose "a notification system operable to

simultaneously notify" each employee having a corresponding qualification in the

database.

Mitsuoka discloses forwarding a job offer notification to all contractors based on

whether the contractors' schedule is free, sending out a job offer notification only to

contractors who have at least a certain aptitude value necessary for the job, and

transmitting a job offer notification to contractors based on the level of difficulty and

importance of the job to the appropriate contractors, wherein the communication and

notification portions of the job offer notification are performed using email and HTTP and an information transmitter portion as disclosed in Figure 2 (reads on "a notification system") (col. 6 line 23 to col. 7 line 56, col. 10 line 1 to col. 12 line 53).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the components of Mitsuoka within the system of Bukow with the motivation of efficiently allowing the matching of projects to workers over the Internet (Bukow; col. 1 lines 5-50) and reducing the level of complication required for negotiating jobs between job providers and multiple contractors (Bukow; col. 1 lines 5-50; Mitsuoka; col. 2 lines 18-46).

(G) As per claim 27-28, Bukow discloses a server in communication with the database and client computers in communication with the server over the Internet or a network (col. 5 lines 45-52, col. 9 lines 4-15, col. 11 lines 32-46).

(H) As per claim 32, Bukow discloses the activities including a type of activity such as non-technical jobs like temporary position or full-time employment (Figure 1, col. 2 lines 11-65, col. 5 lines 10-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38).

(I) As per claim 37, Bukow discloses a method for matching projects with workers using a computer database system over the Internet comprising (col. 5 lines 45-53, col. 10 lines 32-64, col. 11 lines 30-35):

(a) providing a database of workers, the database having information about quantitative characteristics of the worker, wherein the characteristics include experience, start/end time, cost, hours per week a worker is able to work, and reputation, wherein the database is in communication with a matching system, wherein the matching system includes a web interface, wherein the web interface includes a login web page viewed in a web browser via a client computer (see Figure 2) that allows a person to identify herself/himself to the system using an email address and password, wherein the web interface allows a worker to view projects that match the workers characteristics (Figures 1-8, col. 2 lines 13-50, col. 2 line 53 to col. 4 line 33, col. 5 lines 45-55, col. 7 line 55 to col. 8 line 48, col. 9 line 1 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38);

(b) creating a project that needs to be performed by a worker, the project having a corresponding plurality of characteristics such as the activity, experience required, start/end time, hours per week, a location, and an industry, wherein the activities include art creation, business modeling, diagramming, flowcharting, software programming, language translating, writing, proofreading, researching, and/or some other type of activity such as non-technical jobs like temporary position or full-time employment (Figure 1, col. 2 lines 11-65, col. 5 lines 10-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38) and when creating the project, indicating the number of workers to be matched by specifying the system parameter n, where n = the number matches to display to the web interface for a worker and n ranges from 1 to n (Figure 1, col. 5 line 10 to col. 7 line 55, col. 8 line 49 to col. 12 line 38) (It is noted that in Bukow's

method a project creator is able to specify n = 1, thus the highest ranking worker would be found (a form of "preferred employee") (Figure 1, col. 5 line 10 to col. 7 line 55, col. 8 line 49 to col. 12 line 38); and

(c) providing a login web page allowing a worker to identify herself/himself to the system using an e-mail address and password, wherein the workers and projects are stored in a database, and wherein the web page displays matches of available projects for which the worker has corresponding characteristics (Figures 2-8, col. 2 line 65 to col. 5 line 55, col. 7 line 55 to col. 9 line 3, and col. 9 line 25 to col. 12 line 3).

As per the recitation of "a computer generated message", Bukow does not expressly disclose this feature. However, as discussed in step (c) above, Bukow clearly discloses showing a worker available projects.

Mitsuoka includes receiving notification that a job has been applied for by a contractor, wherein a selection result notification is sent to the contractor who applied for the job by email using the contractor's stored email address, wherein the notification is sent out directly after the application by the contractor has been received, wherein other contractors that applied for the same job are notified that they have not been selected (col. 8 lines 45-63, col. 9 lines 5-55).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the components of Mitsuoka within the method of Bukow with the motivation of efficiently allowing the matching of projects to workers over the Internet (Bukow; col. 1 lines 5-50) and reducing the level of complication

required for negotiating jobs between job providers and multiple contractors (Mitsuoka;

col. 2 lines 18-46).

(J) Claim 42 repeats the same limitations as claims 17, 37, and 51, and is therefore

rejected for the same reasons given for those claims, and incorporated herein.

(K) System claim 44 repeats the subject matter of method claim 37, respectively, as a

set of apparatus elements rather than as a series of steps. As the underlying processes

of claims 37 has been shown to be fully disclosed by the collective teachings of Bukow

and Mitsuoka in the above rejection of claim 37, it is readily apparent that the system

disclosed collectively by Bukow and Mitsuoka includes the apparatus to perform these

functions. As such, these limitations are rejected for the same reasons given above for

method claim 37, and incorporated herein. In addition, as per the system components

of claim 44, see the rejection of claim 26 above.

(L) Claim 49 repeats the same limitations as claims 17, 37, and 51, and is therefore

rejected for the same reasons given for those claims, and incorporated herein.

(M) As per claim 51, Bukow discloses an Internet based method for creating projects

and matching projects with workers using a computer database system comprising (col.

5 lines 45-53, col. 10 lines 32-64, col. 11 lines 30-35):

(a) providing a database of workers, the database having information about quantitative characteristics of the worker, wherein the characteristics include experience, start/end time, cost, hours per week a worker is able to work, and reputation (Figure 1, col. 2 lines 13-50, col. 2 line 53 to col. 4 line 33, col. 5 lines 45-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38);

(b) providing a database of projects that need to be performed by a worker, the project having a corresponding plurality of characteristics such as the activity, experience required, start/end time, hours per week, a location, and an industry, wherein the activities include art creation, business modeling, diagramming, flowcharting, software programming, language translating, writing, proofreading, researching, and/or some other type of activity such as non-technical jobs like temporary position or full-time employment (Figure 1, col. 2 lines 11-65, col. 5 lines 10-55, col. 9 line 25 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38);

(c) providing a server including a database coupled in communication with the Internet to a client computer, wherein the client computer is used by a project creator to create a project via a web site and HTML form, wherein the projects are then stored in the database on the server (Figures 1-8, col. 2 line 14 to col. 5 line 52, col. 8 line 49 to col. 9 line 3, col. 9 lines 4-25, col. 11 lines 32-47);

(d) in response to the created project, matching the workers to projects using the corresponding characteristics to determine groups of matching workers for corresponding projects, wherein the workers and projects are stored in a database, wherein the characteristics are required elements that a worker must absolutely fit in

order to be matched with the project, and wherein for example, if there are ten thousand workers and the activity is web artwork, perhaps only one hundred workers in the system have indicated they are interested in performing web artwork, therefore 9,900 workers are eliminated at this stage (col. 2 lines 13-50, col. 2 line 65 to col. 5 line 55, and col. 9 line 25 to col. 12 line 3); and

(e) providing a web interface that includes a login web page viewed in a web browser via a client computer (see Figure 2) that allows a person to identify herself/himself to the system using an email address and password, wherein the web interface allows a worker to view projects that match the workers characteristics (Figures 1-8, col. 2 lines 13-50, col. 2 line 53 to col. 4 line 33, col. 5 lines 45-55, col. 7 line 55 to col. 8 line 48, col. 9 line 1 to col. 10 line 32, and col. 11 line 32 to col. 12 line 38).

Bukow is silent as to the step of directing a notification to a web page "specified in the record of at least one employee." However, Bukow discloses using the workers email address and password to login to a web page to view available projects (col. 7 line 55 to col. 8 line 48) (reads on "directing a notification to a web page").

Mitsuoka includes receiving notification that a job has been applied for by a contractor, wherein a selection result notification is sent to the contractor who applied for the job by email using the contractor's stored email address, wherein the notification is sent out directly after the application by the contractor has been received, wherein other contractors that applied for the same job are notified that they have not been selected (col. 8 lines 45-63, col. 9 lines 5-55).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the components of Mitsuoka within the method of Bukow with the motivation of efficiently allowing the matching of projects to workers over the Internet (Bukow; col. 1 lines 5-50) and reducing the level of complication required for negotiating jobs between job providers and multiple contractors (Mitsuoka; col. 2 lines 18-46).

(N) Claim 53 repeats the same limitations as claims 17, 37, and 51, and is therefore rejected for the same reasons given for those claims, and incorporated herein.

(O) System claim 58 differs from system claims 26 and 44 by reciting an update system operable to update the information about the positions in real time in response to a change message received from a computer on the network. As per this element , Bukow discloses a website accessed over the Internet, requiring an email address and password to access, where a worker or project creator is able to modify posted projects as well as work interests (reads on "update system") (Figures 2-8, col. 7 line 55 to col. 9 line 15, col. 11 line 33 to col. 12 line 3).

The remainder of claim 58 repeats the same limitations as claims 17, 26, and 44, and is therefore rejected for the same reasons given for those claims, and incorporated herein.

(P) Claim 59 repeats the same limitations as those addressed in the rejection of claim

58. Therefore, claim 59 is rejected for the same reasons given for claim 58, and

incorporated herein.

12.   Claims 30-31, 36, 40, 43, 48, and 50 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Bukow (6,567,784) and Mitsuoka et al. (6,446,914) as applied

to claim 26, 37, and 44, and further in view of Thompson et al. (6,334,133).

(A) As per claims 30-31, 41, 43, 48, and 50, the teachings of Bukow and Mitsuoka and

the motivation for their combination are given above, and incorporated herein.

        Bukow and Mitsuoka fail to expressly disclose a training system operable to

provide instructions to an employee at a remote computer coupled with the database

and an employee being a substitute teacher.

        Thompson discloses the server relaying instructions from the organization or

messages from the absent worker to the substitute at a remote computer and interface,

including summary substitute assignment reports, instructions, and course information

(Fig. 12, col. 4 lines 65 to col. 5 line 4, col. 6 lines 1-45, col. 7 lines 19-54, col. 8 lines

15-63, and col. 10 lines 8-20). In addition, Thompson discloses the central server

automatically generating a list of one or more substitute workers (reads on "temporary

worker) for each absent worker in response to information representing absent workers,

and wherein the worker can also be a teacher and the substitute worker is a substitute

teacher (Fig. 12, col. 1 lines 44-60, col. 2 line 51 to col. 3 line 5, col. 6 lines 24-39, col. 8

lines 15 to col. 10 line 7 and col. 12 lines 1-13).

At the time the invention was made, it would have been obvious to include the

features of Thompson within the system and method taught collectively by Bukow and

Mitsuoka with the motivation of reducing the time and effort required to find a substitute

teacher (Thompson; col. 1 line 18 to col. 2 line 67).

(B) As per claim 36, the teachings of Bukow and Mitsuoka and the motivation for their

combination are given above, and incorporated herein.

Bukow and Mitsuoka fail to expressly disclose a prioritizing system operable to

set a priority from a set of ordered priorities for each employee such that the notification

system notifies first each employee having a first priority. However, Bukow includes

rating workers based on the workers characteristics and the projects characteristics

(col. 11 line 32 to col. 12 line 39).

Thompson discloses the substitute fulfillment system compiling a list of preferred

replacements and a back-up list of acceptable replacements, wherein the compiling

step includes the organization identifying qualifications or criteria for selecting an

acceptable replacement for a particular worker and then compiling the aforementioned

lists by searching for potential replacements with the requisite qualifications in a master

list of replacements, wherein the server then contacts the potential replacements (col. 9

lines 40-67).

At the time the invention was made, it would have been obvious to include the features of Thompson within the system taught collectively by Bukow and Mitsuoka with the motivation of allowing parties to match to projects based on quantitative measures thus providing the best worker for a particular project (Bukow; col. 1 lines 10-50).

13.   Claims 60-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bukow (6,567,784) in view of Mitsuoka et al. (6,446,914) as applied to claims 17, 26, 37, 44, 51, and 58, and further in view of Joao (6,662,194).

(A) As per claims 60-71, Bukow and Mitsuoka fail to expressly disclose wherein the web page displays information specific to an employee that has previously filled the position, and wherein the information specific to an employee was entered to the database by the employee.

Joao teaches a database storing past employee information and types of positions, wherein the information is displayed on a web page, and wherein an individual is able to transmit information to the database over a computer network related to the employee information (Fig. 1, col. 12 lines 9-18 and lines 38-47, col. 14 lines 45-60, col. 15 lines 46-63, col. 21 lines 32-43, col. 31 lines 55-67).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to combine the teachings of Joao within the method and system of Bukow and Mitsuoka with the motivation of automating job searching services in a

network environment while reducing the time, expense, and effort needed in performing

these services (Joao; col. 40 line 65 to col. 41 line 3).

Affidavit

14.   Applicant has submitted an affidavit to remove Bukow (6,567,784) as a reference

applied under 35 U.S.C. § 103(a) in the previous Office Action. The affidavit filed on 20

September 2004 under 37 CFR 1.131 has been considered but is ineffective to

overcome the Bukow reference (6,567,784) for the following reasons:

(A) According to MPEP § 715.07, Applicant should specifically refer to each exhibit

relied upon in the affidavit or declaration, in terms of what it is relied upon to show. The

affidavit or declaration and exhibits must clearly explain which facts or data Applicant is

relying on to show completion of his or her invention prior to the particular date. Vague

and general statements in broad terms about what the exhibits describe along with a

general assertion that the exhibits describe a reduction to practice "amounts essentially

to mere pleading, unsupported by proof or a showing of facts" and, thus, does not

satisfy the requirements of 37 CFR 1.131(b). *In re Borkowski*, 505 F.2d 713, 184 USPQ

29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out

exactly what facts are established and relied on by Applicant. 505 F.2d at 718-19, 184

USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964)

(Affidavit "asserts that facts exist but does not tell what they are or when they

occurred."). A general allegation that the invention was completed prior to the date of

the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r

Pat. 1883). Similarly, a declaration by the inventor to the effect that his or her invention

was conceived or reduced to practice prior to the reference date, without a statement of

facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR

1.131.

In this case, Applicant states in the declaration of Charles Bernasconi that the

Inventions were conceived prior to June 1, 1999 and are documented in Exhibits A-H. It

is respectfully submitted that Applicant has not clearly explained which facts or data in

Exhibits A-H the Applicant is relying upon to show completion of the invention prior to

June 1, 1999. The Applicant is required to give a clear explanation of how Exhibits A-H

correlate with the features of the claimed invention (i.e., point out the sections of

Exhibits A-H that show each claimed limitation). Applicant has simply provided general

allegations that the invention was completed prior to the date of the reference. *Ex parte

Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883). These allegations are

insufficient to establish that the invention was conceived prior to June 1, 1999.

In addition, Applicant fails to provide sufficient showing of facts to establish

diligence from a date of conception prior to June 1, 1999 to the constructive reduction to

practice on August 20, 1999, nearly two months later. An applicant must account for

the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908,

919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or

months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920,

923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was

diligently reduced to practice" is not a showing but a mere pleading). A 2-day period

lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ

189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); *Fitzgerald v. Arbib*, 268 F.2d 763, 766,

122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period.

Efforts to exploit an invention commercially do not constitute diligence in reducing it to

practice. An actual reduction to practice in the case of a design for a three-dimensional

article requires that it should be embodied in some structure other than a mere

drawing.); *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949)

(Diligence requires that applicants must be specific as to dates and facts.). MPEP

2138.05.

Response to Arguments

15.   Applicant's arguments filed 4 November 2004 have been fully considered but

they are not persuasive. Applicant's arguments will be addressed below in the order in

which they appear in the response filed 4 November 2004.

(A) As Applicant fails to provide any further arguments other than the reliance on

Affidavit evidence that is ineffective to remove the Bukow reference for the reasons

given above, the rejections are hereby maintained

Conclusion

16.   The prior art made of record and not relied upon is considered pertinent to

Applicant's disclosure. The cited but not applied prior art teaches a system and method

for evaluating a selectable group of people against a selectable set of skills (6,735,570)

and engagement of non-employee workers (US 2005/0010467).

17.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-

3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm,

and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the Receptionist whose telephone number is (703)

306-1113.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

18. **Any response to this action should be mailed to:**

> Commissioner of Patents and Trademarks
> Washington, D.C. 20231

Or faxed to:

> (703) 872-9306 or (703) 872-9326   [Official communications]
>
> (703) 872-9327   [After Final communications labeled "Box AF"]
>
> (703) 746-8374   [Informal/ Draft communications, labeled
>
> "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

CB
January 19, 2005

ALEXANDER KALINOWSKI
PRIMARY EXAMINER